



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,155	07/08/2003	Joel T. Schmieg	5056-0001	8248

7590 10/06/2004
Michael L. Diaz
Michael L. Diaz, P.C.
Suite 200
555 Republic Drive
Plano, TX 75074

EXAMINER

EVANS, ROBIN OCTAVIA

ART UNIT	PAPER NUMBER
----------	--------------

3742

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/615,155

Applicant(s)

SCHMIEG, JOEL T.

Examiner

Robin O. Evans

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☒ Claim(s) 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment presented in communication filed July 23, 2004 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-9, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Arnold.

Smith shows a fire fighting penetration tool having a weighted head 102, penetrating body 112, hollow handle 109, grooves 118 and interchangeable penetrating tools as shown in figures 15-18 and figure 23. It should be noted that the tube 102 must inherently have enough weight to support the piercing nozzle and therefore is considered a weighted head. Smith does not show a planar surface head affixed to the weighted head. Arnold shows another fire extinguisher having a planar surface 168 affixed to a weighted head 164. It would have been obvious to one of ordinary skill in the art to have affixed a planar surface to the head of Smith's tool so as to be able to limit the penetration of the nozzle as shown and suggested by Arnold in column 6, line 62.

4. Claims 10-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view Arnold applied to claims 1-9, 15 and above and further in view of Badberg (2,993,650).

Art Unit: 3742

The combination fire-fighting tool shown by Smith and Arnold shows all of the claimed limitations but does not show the handle having a shut off valve or a stream adapter. Badberg shows another fire nozzle having a shut off valve 16 located on the handle and a stream adapter 20. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the Smith-Arnold combination fire fighting tool with a shutoff valve on the handle so as to provide a quick and convenient way of shutting off water to the device and to have also supplied a stream adapter so to be able to eject the desired stream or to change the volume of the agent ejected from the nozzle.

As to claim 11 and the limitation that the weighted head is configured to weigh more than the weight of the remainder of said handle, it is deemed that the since the weight of the combination nozzle is used to drive the nozzle through a surface that it would inherently have to weigh more than the remainder of the handle, however if not it would have been obvious to one of ordinary skill in the art to have made the weight so that it weighed more than the handle so as to have sufficient strength to drive the tool when needed.

5. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Arnold and further in view of Cunningham (551,527).

The combination fire-fighting tool shown by Smith and Arnold shows all of the claimed limitations but does not show a stream adapter. Cunningham shows another nozzle having a stream adapter E. It would have been obvious to one of ordinary skill in the art to have made the Smith-Arnold fire fighting tool with a stream adapter so as to be able to direct the stream so as not to strike the user as suggested by Cunningham.

Art Unit: 3742

As to the limitation that the weighted head is configured to weigh more than the weight of the remainder of said handle, it is deemed that since the weight of the combination nozzle is used to drive the nozzle through a surface that it would inherently have to weigh more than the remainder of the handle, however if not it would have been obvious to one of ordinary skill in the art to have made the weight so that it weighed more than the handle so as to have sufficient strength to drive the tool when needed.

6. Claims 1-6 and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badberg in view of Arnold.

Badberg shows a fire fighting tool having a hollow handle, weighted head 14, penetrating body 12, holes 30, threaded portions as shown in figure 2, shut off valve 16, penetrating surface 32 and stream adapter 20. Badberg does not show a planar surface head affixed to the weighted head. Arnold shows another fire extinguisher having a planar surface 168 affixed to a weighted head 164. It would have been obvious to one of ordinary skill in the art to have affixed a planar surface to the head of Bamberg's tool so as to be able to limit the penetration of the nozzle as shown and suggested by Arnold in column 6, line 62.

It should be noted that the shaft 104 must inherently have enough weight to support the piercing nozzle and therefore is considered a weighted head.

As to claim 11 and the limitation that the weighted head is configured to weigh more than the weight of the remainder of said handle, it is deemed that since the weight of the combination nozzle is used to balance the device during use that it would inherently have to weigh more than the remainder of the handle, however if not it would have been obvious to one

Art Unit: 3742

of ordinary skill in the art to have made the weight so that it weighed more than the handle so as to have sufficient strength to balance the tool.

7. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badberg in view of Arnold as applied to claims 1-6 and 10-16 above, and further in view of Smith.

The combination Badberg-Arnold tool includes all of the claimed limitations but does not show the penetrating body having a groove. Smith shows another penetrating body having grooves 118. It would have been obvious to put grooves as shown on Smith's tool on the penetrating body so as to be able to change the pattern of the spray such that the pattern will cover a larger area.

Allowable Subject Matter

8. Claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Whear, Randall and Petersen show devices in the general state of the art of the invention.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

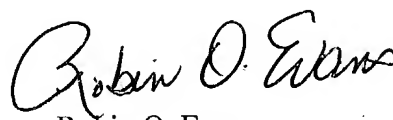
Art Unit: 3742

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin O. Evans whose telephone number is (703) 305-5766. The examiner can normally be reached on Monday-Thursday 6:30 am- 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robin O. Evans
Primary Examiner
Art Unit 3742
10/3/04

roe